STATE OF MICHIGAN

COURT OF APPEALS

In re ROW, Minor.

LISA ANN SMITH and JEFFREY SMITH,

Petitioners-Appellants,

v

DEPARTMENT OF HUMAN SERVICES,

Respondent-Appellee,

and

ROW,

Appellee.

UNPUBLISHED
June 24, 2014

No. 319389
Ingham Juvenile Division
LC No. 13-000103-AM

Before: BORRELLO, P.J., and SERVITTO and BECKERING, JJ.

PER CURIAM.

Petitioners, Lisa Smith and Jeffrey Smith, appeal as of right a November 22, 2013 circuit court order denying their challenge to the decision of William Johnson, the Michigan Children's Institute (MCI) Superintendent, denying the Smiths consent to adopt the minor child, ROW. We affirm.

I. FACTUAL BACKGROUND

The minor child became the subject of child protective proceedings at birth. In a preliminary adoptive family assessment, respondent alleged that after ROW's removal on June 15, 2011, the Smiths declined placement of ROW. At the time, the Smiths had six children in their home, including one of ROW's biological siblings, whom the Smiths had previously adopted. The Smiths later denied respondent's assertion that they initially declined placement of ROW. On or about June 16, 2011, the Smiths contacted respondent and requested to have ROW placed in their home. Despite their request, the adoption and foster care agency, Child and Family Charities (Child and Family), initially placed ROW with a licensed, unrelated foster family for a short period before placing her with a paternal relative. After approximately 18 days, the relative determined she could no longer care for ROW. At replacement, Child and

Family returned ROW to her original foster home even though the Smiths had already indicated they wanted placement. ROW remained in this foster home throughout the proceedings. As discussed *infra*, the foster family with whom ROW was placed later petitioned to adopt ROW and was approved for adoption.

Throughout the case, the Smiths asserted that because they had previously adopted one of ROW's biological siblings, they should have preference for placement, or in the alternate, sibling visitation with ROW's sibling whom they had adopted. Child and Family refused to allow visitation, claiming, among other things, that visitation was not allowed because the initial goal was reunification with ROW's birth parent, that there was tension between ROW's foster family and the Smiths, and that the definition of "sibling" in pertinent foster care visitation policies did not include siblings who had previously been adopted. Kathy Fiorletta, a child welfare licensing consultant for the Bureau of Children and Adult Licensing, reviewed the handling of the denial of the Smiths' requests for sibling visits and concluded that Child and Family erred in its interpretation of visitation policies. She also concluded that Child and Family failed to document the alleged tension between ROW's foster family and the Smiths. At some point, the MCI Superintendent was consulted regarding the visitation issue. In September 2012, after termination of ROW's birth parents' parental rights, Child and Family contacted the MCI Superintendent by email and informed him that they were not going to allow visitation. The MCI Superintendent agreed with the decision at that time because of the child's age and the fact that she did not have previous visitation with her sibling.

ROW's birth parents' parental rights were terminated in August of 2012, and ROW was committed to the MCI. The Smiths and ROW's foster family sought consent to adopt the child. Child and Family did not recommend the Smiths for adoption for a number of reasons, including that ROW was stable in her current placement and that she had an existing, long-term bond with her foster family. On March 25, 2013, the MCI Superintendent issued a written opinion denying the Smiths consent to adopt. He testified at a subsequent hearing to challenge his decision that although he did not conduct an investigation, he performed an independent review of the documents provided, attended a case conference with the Smiths and Child and Family, and visited ROW in her foster home. In making his decision, the MCI Superintendent concluded that the Smiths were "clearly very capable of providing" for ROW, and that they wanted to raise ROW with one of ROW's biological siblings. However, the MCI Superintendent believed that removing ROW from her foster family, with whom she had lived for almost the entirety of her life, would be too disruptive. Thus, he concluded that it was in ROW's best interests to deny the Smiths' request to adopt ROW. The MCI Superintendent listed the following factors and analysis as reasons supporting his decision:

> [1] **The length of time the child had lived in a stable, satisfactory environment and the desirability of maintaining continuity.** [ROW] has now resided in her current foster home since June, 2011 except for a brief period in August, 2011. She is 21 months old. She is being very well cared for by this family and it would be very disruptive to her to be removed from this home.
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> [2] **Ability of the prospective adoptive parent to meet the child's physical and emotional needs.** Both families have a strong ability to meet [ROW's] physical and emotional needs. The current foster family where [ROW] lives has

demonstrated a very strong ability to do so. The Smiths are [also] clearly very capable of providing for the care of children.

[3] **Willingness and ability of a relative to assure the physical and emotional wellbeing of the child on a permanent basis.** This factor does not apply. Neither family is a relative to [ROW].

[4] **The psychological relationship that exists between the child and the prospective adoptive parent.** This factor clearly weighs heavily in favor of the current foster parents of [ROW]. She has formed a very close, secure attachment to her foster parents. She views them as her parents. She has not had any visits with the Smith family; therefore, she has no psychological relationship to them. Removal from this home is not in her best interests.

[5] **Ability and willingness of the prospective adoptive parent to adopt siblings of the child.** This factor weighs in favor of the Smiths. DHS does support placing siblings together. However, if there are valid reasons to support sibling separation, that may be recommended. In this case, [ROW] has no psychological awareness of the existence of biological siblings. To remove her from the placement that she considers to be her family at her very young age in order to place with a sibling that she does not know, is contraindicated.

Thereafter, the Smiths requested a hearing pursuant to MCL 710.45(2), which permits an adoption petitioner who has been denied consent to argue that the MCI Superintendent's decision was arbitrary and capricious. At the hearing, the circuit court concluded that the Smiths failed to meet their burden of proof and upheld the MCI Superintendent's decision to deny the Smiths consent to adopt.

II. THE MCI SUPERINTENDENT'S DECISION

The Smiths argue that the trial court erred in finding that they failed to present clear and convincing evidence that the MCI Superintendent's decision was arbitrary and capricious. This Court reviews for clear error the trial court's determination regarding whether the adoption petitioner established, by clear and convincing evidence, that the MCI Superintendent's decision to deny consent was arbitrary and capricious. *In re Keast*, 278 Mich App 415, 423; 750 NW2d 643 (2008). We also review the trial court's factual findings for clear error. *In re COH, ERH, JRG, & KBH Minors*, ___ Mich ___; ___ NW2d ___ (Docket No. 147515, decided April 22, 2014), slip op at 18. A finding is clearly erroneous when, on review of the whole record, this Court is left with the definite and firm conviction that a mistake has been made. *Boyd v Civil Service Comm*, 220 Mich App 226, 234-235; 559 NW2d 342 (1997). See also *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). This Court reviews de novo questions of law, such as statutory interpretation. *Thomas v City of New Baltimore*, 254 Mich App 196, 201; 657 NW2d 530 (2002).

> The MCI superintendent represents the state of Michigan as guardian of all children committed to the state by a family court after termination of parental rights. MCL 400.203. The superintendent is authorized to consent to the

> adoption of any child committed to the MCI as a state ward. MCL 400.209. Consent by the superintendent to the adoption of a state ward is required before the family court can approve a prospective adoption. MCL 710.43(1)(b). Under MCL 710.45(2), a person who has filed a petition to adopt a state ward and has not received consent from the MCI may file a motion in family court to challenge the MCI superintendent's denial of consent. [*In re Keast*, 278 Mich App at 423.]

The MCI Superintendent's decision to withhold consent to an adoption "must be upheld unless there is clear and convincing evidence that the representative acted arbitrarily and capriciously." *In re Cotton*, 208 Mich App 180, 184; 526 NW2d 601 (1994). See also MCL 710.45(7). "Clear and convincing evidence is evidence that produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established . . . ." *In re Chmura* (*After Remand*), 464 Mich 58, 72; 626 NW2d 876 (2001) (alterations and quotation marks omitted).

> The generally accepted meaning of "arbitrary" is "'determined by whim or caprice,'" or "'arrived at through an exercise of will or caprice, without consideration or adjustment with reference to principles, circumstances, or significance, . . . decisive but unreasoned.'" *Goolsby v Detroit*, 419 Mich 651, 678; 358 NW2d 856 (1984) (internal quotation marks and citations omitted). The generally accepted meaning of "capricious" is "apt to change suddenly; freakish; whimsical; humorsome." *Id*. (internal quotation marks and citations omitted). [*In re Keast*, 278 Mich App at 424-425.]

"It is the absence of any good reason to withhold consent, rather than the presence of good reasons to grant it, that indicates that the decision maker has acted arbitrarily and capriciously."). *Id.* at 425. In other words, the focus is not on whether the MCI Superintendent made the "correct" decision, or if the trial court would have decided the issue differently. *In re Cotton*, 208 Mich App at 184. Instead, the only issue is whether the MCI Superintendent's decision was arbitrary and capricious. *Id.*

Ultimately, in this case, the MCI Superintendent concluded that the Smiths were a suitable placement and were capable of providing for ROW's physical and emotional needs. He also found that the fact that the Smiths had adopted ROW's biological sister weighed in favor of granting them consent to adopt. He expressly noted, however, that the Smiths were not ROW's relatives. Further, he found that ROW had resided with her current foster home for about 21 months, was being very well cared for, and that it would be very disruptive to move her from her current home. The MCI Superintendent took care to note that ROW had formed a "very close, secured attachment to her foster parents" and that she, in fact, viewed them as her parents. He concluded that there was no psychological relationship between ROW and the Smiths, nor was there a psychological relationship between ROW and her biological sibling whom she had never met. He acknowledged that DHS supports placing siblings together, but concluded under the facts of this case that placing ROW with the Smiths and one of her biological siblings was not in ROW's best interests. Additionally, the record makes it clear that he conducted an independent review of the documents submitted by Child and Family, did not rely solely on the adoption assessment recommendations, attended a case conference with the Smiths to listen to their

concerns, observed ROW's strong, healthy attachment to her current placement, and ultimately decided that her best interests would be served by continuing her current placement.

Rather than arguing the MCI Superintendent's stated reasons were arbitrary and capricious, the Smiths argue on appeal that the decision was arbitrary and capricious as a matter of law because the MCI Superintendent failed to comply with relative preference laws and policies, because there was inaccurate information in the documents provided to the court, and because the placement and visitation decisions created the justification for the MCI Superintendent's decision to deny them consent to adopt. The crux of the Smiths' arguments is that federal law, state law, and DHS policy require the MCI Superintendent to give preference for placing a child with his or her relatives. However, it is undisputed that the Smiths are *not* related to ROW, and they have provided no authority or argument that they should be considered ROW's relatives by virtue of their adoption of ROW's biological sibling. Instead, they proclaim in cursory fashion that the statutes apply in this case, and in the case of MCL 722.954a(5), they even go so far as to add language to the effect that adoptive parents of a relative of the child to be placed are "relatives" within the meaning of the statute.

> The goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. If the statutory language is unambiguous, the Legislature is presumed to have intended the meaning clearly expressed, and a court must enforce the statute as written. Words and phrases in a statute shall be construed and understood according to the common and approved usage of the language. [*In re Conservatorship of Townsend*, 293 Mich App 182, 187; 809 NW2d 424 (2011) (citations omitted).]

The Smiths cite several state statutes and one federal statute. We address them in turn. First, MCL 722.954a provides, in pertinent part:

> (2) Upon removal, as part of a child's initial case service plan as required by rules promulgated under 1973 PA 116, MCL 722.111 to 722.128, and by section 18f of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18f, the supervising agency shall, within 30 days, identify, locate, notify, and consult with relatives to determine placement with a fit and appropriate relative who would meet the child's developmental, emotional, and physical needs.
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> (5) Before determining placement of a child in its care, a supervising agency shall give special consideration and preference to a child's relative or relatives who are willing to care for the child, are fit to do so, and would meet the child's developmental, emotional, and physical needs. The supervising agency's placement decision shall be made in the best interests of the child.

Our Supreme Court has held that "the plain language of MCL 722.954a limits the applicability of the preference to only the initial stage of the process, i.e., immediately after a child is removed from his or her parents' care and during the statutory review period established in MCL 722.954a(3)." *In re COH, ERH, JRG, & KBH Minors*, slip op at 12. The Court added that there

was nothing to indicate that MCL 722.954a was intended to apply to decisions occurring *after* termination. *Id*. at 13. Accordingly, the relative preference in MCL 722.954a does not apply to post-termination adoption proceedings and, therefore, MCL 722.954a does not apply to the MCI Superintendent's decision to withhold consent, and his failure to "follow" the statute cannot be used as a basis for concluding that his decision was arbitrary and capricious.

Next, MCL 712A.18f(3) provides that "[t]he case service plan shall provide for placing the child in the most family-like setting available and in as close proximity to the child's parents' home as is consistent with the child's best interests and special needs." Initially, the Smiths' argument is misplaced because, pursuant to the plain language of MCL 712A.18f, the statute does not apply to an adoption proceeding. Rather, MCL 712A.18f(1) provides that the statute applies "in a proceeding under section [MCL 712A.2(b),]" meaning an abuse or neglect proceeding. Moreover, even if the statute applied to an adoption proceeding, nothing in this statute requires preference for placement with a relative or sibling. Further, it is axiomatic that a setting can be "family-like" even if the child is not placed with relatives or siblings.

The Smiths also reference MCL 710.22(g)(*ix*), which provides that factors to be considered when determining the "best interests of the adoptee" or "child" includes "[t]he reasonable preference of the adoptee, if the adoptee is 14 years of age or less and if the court considers the adoptee to be of sufficient age to express a preference." No one has suggested that ROW is capable of expressing a preference on this matter; she was only 21 months old when the MCI Superintendent issued his consent adoption decision. We assume the Smiths meant to reference MCL 710.22(g)(*x*), which provides that the "best interests of the adoptee" or "child" includes "[t]he ability and willingness of the adopting individual or individuals to adopt the adoptee's siblings." Nevertheless, the MCI Superintendent's decision clearly indicates that he considered the fact that the Smiths had adopted ROW's biological sister and still determined that it was in ROW's best interests to remain in her current placement.

The Smiths also assert that the MCI Superintendent failed to comply with DHS policy pertaining to preference to place a child with a relative. The DHS Foster Care Manual (FOM) states that "[p]reference must be given to placement with a fit and willing relative." FOM 722-3, p 4. It also provides that "[w]hen there are at least two options for placement, one with an adult relative and the other with a sibling in foster care or an adoptive home, **and both are equal** in placement section/best interest criteria, preference should be given to the placement with the sibling." FOM 722-3, p 6. The policy manual also acknowledges that "[w]hile placement with siblings and relatives is usually in the child's best interest, at times extenuating circumstances in the identified home may negatively impact the success of the placement, and perhaps the child's safety." FOM 722-3, p 6. As an initial matter, the FOM appears to apply only to foster care placement decisions, whereas the MCI Superintendent in this case made an *adoption* decision. The Smiths have not provided this Court with any authority that the FOM should apply to an adoption decision. Moreover, the policy provides a preference when two options for placement are *equal* on the best interest factors used to determine placement. Here, given ROW's bond with her foster parents, the length of time she spent with those parents, her need for stability, and her lack of connection to the Smiths, the MCI Superintendent found that the best interest factors were not equal, and that they favored the foster care family. The Smiths have given us no indication to find that the MCI Superintendent clearly erred in such a finding. Thus, even if the policy directive applied to adoption proceedings, the Smiths cannot show a violation of the

policy. Further, there is no evidence that the MCI Superintendent made any decisions pertaining to ROW's foster care placements. In fact, the closest he came to making a decision about ROW was when he agreed with Child and Family's decision to deny visitation after termination. Accordingly, the Smiths have not established that the FOM is even relevant to a determination of whether the MCI Superintendent's *adoption* decision was arbitrary and capricious.

The Smiths also argue that federal law was not properly followed. Specifically, Title IV-E, 42 USC 671(a)(31), provides that in order to be eligible for federal monies a state must have a plan approved that, among other things, provides that "reasonable efforts shall be made" to place siblings in the same "adoptive placement" when removed from their home "unless the State documents that such a joint placement would be contrary to the safety or well-being of any of the siblings." Further, it provides that if the children are not placed jointly, then the state plan should provide for frequent visitation unless "that frequent visitation or other ongoing interaction would be contrary to the safety or well-being of any of the siblings." The Smiths acknowledge that it is not clear if this statute applies to the proceedings in the instant case. However, they assert that because it is a federal mandate, the MCI Superintendent must follow the statute. What the Smiths fail to recognize is that the federal law mandates that a state adhere to certain requirements if it wants to receive certain federal funding. See 42 USC 671. The statute does not compel the action of an official, such as the MCI Superintendent, in a case where consent to adoption is sought. Moreover, the Smiths failed to present any evidence that Michigan is not in compliance with 42 USC 671. Further, even assuming *arguendo* that the federal statute applies directly to the MCI Superintendent's decision, it is not apparent that his decision violates this law. He did, after all, make findings that it would not be in ROW's best interests to be placed in the same home as her sibling because it would be disruptive to her wellbeing to remove her from her current placement and because she had a secure attachment to her current foster parents.

The Smiths also argue, generally, that state and federal law required the MCI Superintendent to find a home that could take placement of both of the children. Their home, they assert, is the only home that could facilitate that requirement. They cite nothing in support of this proposition. However, even assuming that every single relative preference law and policy cited by the Smiths applied to the facts of this case, none of the cited laws or policies require the MCI Superintendent (or any other supervising agency) to place siblings together under all possible circumstances, particularly where, as was the case here, the Smiths have not demonstrated that the MCI Superintendent clearly erred in concluding that it was in ROW's best interests for her to be adopted by her foster family.

Next, the Smiths argue that the MCI Superintendent vacillated in his adoption priorities between relatives and current foster families in the past. Assuming *arguendo* that is true, we conclude that it is irrelevant to his decision in this particular case.

The Smiths next argue that our Supreme Court's order in *In re CW*, 488 Mich 935; 790 NW2d 383 (2010), requires that the reason for denying consent must be supported by evidence and based on the individual circumstances of the child. In *CW*, our Supreme Court reversed this Court's decision for the reasons stated in the dissenting opinion, and remanded to the trial court with orders to "allow the petitioners to present relevant evidence in support of their claim that the [MCI] Superintendent's decision to withhold consent to adopt the minor children was arbitrary and capricious." *Id*. In his dissenting opinion, Judge Shapiro reasoned that whether the MCI

Superintendent's decision was arbitrary and capricious could only be determined by evaluating whether his "articulated reasons were made without consideration for the children's individual circumstances or made whimsically, which can only be achieved by examining whether [his] reasons were invalid in light of the evidence." *In re CW*, unpublished opinion per curiam of the Court of Appeals, issued February 16, 2010 (Docket No. 292866), unpub op p 3 (SHAPIRO, J., dissenting) (internal citation omitted). He concluded that "[a]t the very least, petitioners should have been permitted to present all of their evidence before the trial court rendered its decision." *Id*. at 4. Accordingly, *CW* stands for the proposition that the petitioner in a Section 45 hearing must be permitted to present all relevant evidence before the trial court makes a decision as to whether the petitioners presented clear and convincing evidence that the MCI Superintendent's adoption decision was arbitrary and capricious. In this case, the Smiths do not assert that they were prohibited from presenting relevant evidence. Instead, it appears that they are arguing that the MCI Superintendent only performed a limited investigation of the facts, so his decision should be reversed. However, in this case, the MCI Superintendent's decision was supported by the reports submitted by Child and Family as well as the Superintendent's testimony about the home visit he conducted with ROW where he personally witnessed her attachment to her foster family. Further, ROW's placement history was undisputed. Accordingly, the Superintendent's conclusion that ROW had a secure attachment to her foster parents, to whom she referred as "mom and dad," and that she did not have a psychological relationship with either the Smiths or her biological sister, was clearly supported by the testimony solicited at trial. This is not a case where the Smiths were unable to present relevant evidence in support of their claim that the MCI Superintendent's decision was arbitrary and capricious. Accordingly, the Smiths have failed to establish that the MCI Superintendent did not consider the actual circumstances of ROW's case. See *id*.

The Smiths next argue that the trial court erred because Child and Family filed reports containing false and inaccurate information. The Smiths assert that the false reports caused the court to make rulings that were based on false information. Further, the Smiths assert that the court proceedings were compromised because the MCI Superintendent and the Child and Family workers were untruthful when they testified. The Smiths assert that information was withheld from their discovery requests. Further, the MCI Superintendent's reasons for the denial of consent to adopt were invalid because they were based on false and insufficient information. They assert that the MCI Superintendent's decision was arbitrary because he performed his duties in ignorance of the facts directly bearing on the matter. The trial court found that the Smiths had failed to prove the inaccuracy of the challenged information at trial. Further, the court noted that testimony provided that correction of any allegedly incorrect information would not have changed the decision. The MCI Superintendent testified that if the errors were, in fact, made they would not have changed his opinion in the case. The trial court clearly found this testimony credible. See MCR 2.613(C) (regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appear before it). Further, even on appeal, the Smiths fail to address the particular information that was allegedly incorrect, how the incorrect information undermines the MCI Superintendent's *adoption* decision, or what evidence they presented to even establish that the information was incorrect. In addition, the Smiths fail to develop their argument regarding discovery violations; thus, we do not consider the matter. *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Accordingly, we uphold the finding of the trial court that the allegedly incorrect information did make the MCI Superintendent's decision arbitrary and capricious.

Lastly, the Smiths argue that the MCI Superintendent harbored bias against them and, by denying their requests for visitation with ROW, created the condition he would later use to deny the Smiths consent to adoption, thereby rendering his decision a *fait accompli*. We do not agree. The trial court found that the Smiths failed to present evidence of their accusations of bias, and the Smiths have not provided us with any evidence or argument to suggest that such a finding was clearly erroneous. Furthermore, the trial court found that the Smiths were unable to prove any deliberate or nefarious conduct with regard to Child and Family or the MCI Superintendent's decision to deny visitation with ROW, and the Smiths fail to provide evidence demonstrating that such a finding was clearly erroneous. As such, we find this claim to be without merit.

Accordingly, on the record before this Court, the trial court did not clearly err in finding that the Smiths failed to establish, by clear and convincing evidence, that MCI Superintendent lacked any basis for denial that was not arbitrary or capricious. See *In re Cotton*, 208 Mich App at 184.

III. PARTICIPATION OF THE LAWYER-GUARDIAN AD LITEM

The Smiths also argue that the trial court erred in allowing ROW's lawyer-guardian ad litem (LGAL) to participate in the Section 45 hearing. We disagree.

MCL 710.24a(1) enumerates who is considered an interested party for purposes of adoption proceedings. Pursuant to the statute, the LGAL of an adoptee under the age of 14 is not considered an interested party. See MCL 710.24a(1). However, other statutes make clear the Legislature's intent that the LGAL should be involved in the adoption proceedings regardless of whether the LGAL is an interested party under MCL 710.24a(1). Initially, MCL 710.45(5) provides that, in addition to the interested parties enumerated MCL 710.24a(1), the trial court must provide notice of a motion brought under Section 45 to the "guardian ad litem of the prospective adoptee if one has been appointed during a child protection proceedings[.]" Additionally, MCL 400.204(2) provides that the MCI Superintendent and a child's LGAL "may communicate with each other regarding issues of commitment, placement, and permanency planning[.]" Further, if the LGAL has an objection or a concern about "such an issue, the superintendent and the [LGAL] shall consult with each other regarding that issue." MCL 400.204(2). Finally, MCL 712A.17c(9) provides that where, as here, the child was initially the subject of an abuse or neglect petition, the trial court "shall not discharge the lawyer-guardian ad litem for the child as long as as the child is subject to the jurisdiction, control, or supervision of the court, or of the Michigan children's institute or other agency . . . ." Thus, the LGAL was to continue to serve the child until the child was no longer subject to the MCI's supervision or control. Cf. *In re Toth*, 227 Mich App 548, 557; 577 NW2d 111 (1998) (explaining that an LGAL's appointment "clearly concluded" after an adoption has been finalized). In light of the foregoing statutory provisions, the Smiths are not entitled to relief on the basis of the LGAL's participation in this case.

Next, although the Smiths assert that the LGAL had a conflict of interest because she served as an LGAL for one of ROW's siblings and that she failed to perform her statutorily mandated duties, they have failed to provide any authority in support of their position. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, . . . and then search

for authority either to sustain or reject his position." *Mitcham*, 355 Mich at 203. Moreover, we find no evidence of a conflict of interest in this case.

Affirmed.

/s/ Stephen L. Borrello
/s/ Deborah A. Servitto
/s/ Jane M. Beckering